WIGMORE, in § 1126 of his work on EVIDENCE: "This argument seems irrefragable. It does not deny the correctness of the preceding argument, which points out that a consistent statement does not explain away a self-contradiction: but it shows that argument to rest upon an assumption that there has been a self-contradiction, and it reminds us that consistency of statement may serve to overthrow that assumption. This third view, (viz., that the reception or rejection of such statements should be placed in the sound discretion of the trial court), however, has rarely been noticed." Paucity of notice, however, cannot detract from the worth of the view. S. E. D.

EFFECT OF THE EXPIRATION OF A STREET RAILWAY COMPANY'S FRANCHISE.—One would naturally think that when a street railway company obtains from a city council the grant of a franchise in a city street for a prescribed period, the company would at the end of that period have no further right to use the street without another grant from the city council; but the stubborn fight made by the railway company in the recent case of *City of Detroit* v. *Detroit United Railway Co.*, 137 N. W. 645, causes one to wonder if there is not substantial ground for a different conclusion. In that case the street railway company's franchise in certain streets had expired, and the city sought to enjoin the railway company from operating its cars on those streets and to compel it to remove its property therefrom unless the company should pay certain charges fixed by resolution of council. The Michigan Supreme Court held that the contractual relations ended upon the expiration of the franchises, and all rights in the defendant company to occupy the city streets and maintain and operate a street railway thereon then terminated, and the company thereafter became a trespasser; that the city has the absolute right at any time to compel the company to vacate the street upon which the franchises have expired and require it to remove its property therefrom within a reasonable time, and if necessary for that purpose to enforce its rights by a writ of assistance; that the company would yet continue to own the rails and other operating appliances, and would have a reasonable time after notice in which to remove such property. A franchise granted by a municipality to a street railway company and accepted by it constitutes in law a contract mutually binding on both parties, and the rights created by the contract are terminated by the limitations stated in that contract. *Grand Rapids Bridge Co.* v. *Prange*, 35 Mich. 400, 24 Am. Rep. 585; *Union Street Ry. Co.* v. *Saginaw Circuit Judge*, 113 Mich. 694; *Scott* v. *Missouri*, 215 U. S. 336, 30 Sup. Ct. 110; *Detroit* v. *Railway Company*, 184 U. S. 382, 22 Sup. Ct. 410; *Augusta and Summerville R. Co.* v. *City Council of Augusta*, 100 Ga. 701; *City Ry. Co.* v. *Citizen's St. R. Co.*, 52 N. E. 157. The rights under such franchise depend upon the express terms of the grant, and such grants are to be strictly construed in favor of the municipality. *Traverse Company* v. *Traverse City*, 130 Mich. 22; DILLON, MUNIC. CORP., 5 Ed., 1233; *Cleveland Elec. Ry. Co.* v. *Cleveland*, 204 U. S. 116, 27 Sup. Ct. 202, 51 L. Ed. 399; *Horner* v. *Eaton Rapids*, 122 Mich. 121; *State ex rel* v. *City of Thief River Falls*, 102 Minn. 425, 433; *Henry* v. *Railway Co.*, 140 Ia. 201; *Water Company* v. *Knoxville*, 200 U. S. 22, 26 Sup. Ct. 224, 50 L. Ed. 353. In many States public officials have no power to grant an extension of a franchise by mere

inaction, because in granting privileges in streets they may act only according to the express power and methods fixed by law, and in no case would the city be estopped to deny the right of the street railway in the street where no act had been done consistent with an extension of the term, but on the contrary the city had notified the company that its rights would cease on the expiration of the term stated in the original grant. *Board of Mayor, etc., of Morristown* v. *East Tenn. Tel. Co.,* 115 Fed. 304; *City of Detroit* v. *Detroit City Ry.,* 56 Fed. 894; *Township of Bangor* v. *Bay City Traction Co.,* 147 Mich. 165, 7 L. R. A. (N. S.) 1187, 118 Am. St. Rep. 546; *Collins* v. *Grand Rapids,* 108 Mich. 675; *Cleveland Elec. Ry. Co.* v. *City of Cleveland,* 137 Fed. 111; *Louisville Trust Company* v. *Cincinnati,* 76 Fed. 296, 22 C. C. A. 334; NELLIS, STREET AND SURFACE RAILROADS, 18; *Rapid Ry. Co.* v *.City of Mt. Clemens,* 118 Mich. 133, 76 N. W. 318.

If the company's franchise has expired and the city is not estopped to deny the company's right, the company becomes a mere trespasser or liable for a nuisance. *Louisville Trust Co.* v. *City of Cincinnati,* 73 Fed. 716. The city has a right to have the continuing trespasses stopped by an injunction. *Rhoades* v. *McNamara,* 135 Mich. 644, 98 N. W. 392; *F. H. Wolf Brick Co.* v. *Lonyo,* 132 Mich. 162, 93 N. W. 251; *Chicago, B. & Q. R. Co.* v. *Quincy,* 136 Ill. 489; *Plymouth Township* v. *Chestnut Hill & Norristown Ry.,* 168 Pa. St. 181; *Galway* v. *Metropolitan El. R. Co.,* 128 N. Y. 132, 28 N. E. 479; *Northern C. R. Co.* v. *Baltimore,* 21 Md. 95, 105. And to require the company to remove its property from the streets within a reasonable time. *City of Belleville* v. *Citizen's Horse Ry. Co.,* 152 Ill. 171; *Township of Bangor* v. *Bay City Traction & Elec. Co.,* 147 Mich. 165; *Union St. Ry. Co.* v. *Saginaw Circuit Judge,* 113 Mich. 694.

The street railway company on the expiration of its franchise has a right to remove its property from the street. *Cleveland Elec. Ry. Co.* v. *Cleveland,* 204 U. S. 116, 27 Sup. Ct. 202, 51 L. Ed. 399, 137 Fed. 111; *Laighton* v. *City of Carthage, Mo.,* 175 Fed. 145; *East Ohio Gas Light Co.* v. *City of Akron,* 81 Ohio St. 33, 90 N. E. 40. In *Laighton* v. *City of Carthage, Mo., supra,* the court said, "When the franchise contract between the water company and the city expired by limitation, the right of the company to operate its plant and use the streets of the city ceased, and with it the right of the city to demand service. The relation between them was contractual, so that when the contract ended either was at liberty to go its way. * * * The city had its choice either by anticipation to have built its own waterworks and have them in readiness when the contract with the water company should expire, or to have negotiated with the company for the purchase of its plant; and if the terms of purchase could not be agreed upon, the city was empowered * * * to have the property condemned." There was a similar holding in *East Ohio Gas Co.* v. *City of Akron, supra.* If these companies could quit without the consent of the city, certainly they could not have remained when notified by the city to quit.

The position of defendant in the recent case seems to be, "We are in possession, put us out if you can," The decision is certainly based on principle, and is well supported by authority. It is hard to see why it ought to be necessary to carry such a case to the higher courts. J. J. K.